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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

February 8, 1996

By Hand

William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, NW
Washington, DC 20554

Re: Ex Parte Presentation
28 GHz Band Plans
CC Docket No. 92-297

Dear Mr. Caton:

We, the undersigned parties, have participated in the Commission's 28 GHz Rulemaking urging the prompt nationwide deployment of the exciting Local Multipoint Distribution Service ("LMDS") in this largely unused spectrum. We believe that LMDS will bring important new competition to the U.S. communications marketplace by providing consumers with an array of video, telephony, data and interactive services, while also generating significant federal deficit-reducing revenues from spectrum auctions of the 28 GHz band.

It has been our collective view that the Commission must allocate, at a minimum, one contiguous GHz of spectrum for the nationwide deployment of LMDS. This is essential to ensure that LMDS will continue to be viewed on a parity, and therefore, competitive basis with fiber and cable providers by Wall Street and the investor community around the country. Nonetheless, we are mindful of the Commission's laudable efforts to accommodate as many competitive and diverse interests as possible in this spectrum. In this regard, at a meeting on January 25, 1996, members of the Commission's staff notified interested parties that they intend to recommend that the Commission adopt one of three possible 28 GHz band plan options in order to conclude the protracted 28 GHz Rulemaking promptly.

The undersigned parties urge the Commission to generally retain the basic spectrum allocation reflected in the Commission's reasoned and unanimously adopted Third NPRM, where 850 MHz contiguous spectrum is allocated to LMDS in the 27.5-28.35 GHz band on a primary basis, with an additional 150 MHz allocated to LMDS in the 29.1-29.25 GHz band on a co-primary basis. Nonetheless, while retaining this allocation, we strongly urge the Commission to relax the overly rigid proposed sharing

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constraints for use of the 150 MHz in the 29.1-29.25 GHz band, so that LMDS licensees can use this spectrum for the various two-way services that are inherent in the multi-purpose LMDS technology. The Commission should develop flexible sharing service rules for this 150 MHz spectrum that accommodate the legitimate and technically-proven concerns of both LMDS proponents and satellite service providers, who in this new era of maximum spectrum efficiency and competition, must realize that spectrum sharing is a fundamental public policy goal that will not be compromised by untenable and unnecessary restrictions.

In this regard, the Commission should take note of the fact that the current overly rigid sharing rules for the 150 MHz spectrum in question were initially proposed in 1994 in a regulatory environment where the Commission contemplated two 1 GHz LMDS licenses per service area in the 28 GHz. At that time, highly restrictive service rules for sharing this 150 MHz were arguably feasible due to the relatively limited adverse impact on important two-way LMDS-based services throughout the two full GHz of the 28 GHz spectrum that was to be allocated to LMDS. However, in the current regulatory environment of only 1 GHz of spectrum allocated to LMDS, it is essential that the Commission adopt only those limited service rules that address the possible, and not imagined, potential interference needs of all parties who will use this 150 MHz of spectrum in the most robust and competitive fashion. Unnecessary elevation restrictions and unsound restrictions on such important LMDS services as two-way services are contrary to the public interest and can only limit the enormous potential of LMDS spectrum auctions by the Commission this summer. Moreover, with the proliferation of new technologies to minimize potential interference, the Commission must conclude its 28 GHz Rulemaking proceeding in a reasoned fashion that heralds to the entire communications marketplace that this Commission will no longer tolerate arcane and parochial approaches to the use of spectrum, including the 28 GHz band.

Accordingly, as the Commission concludes the protracted 28 GHz Rulemaking, we urge that the proposed and thoughtful allocation of 1 GHz of LMDS spectrum from 27.5-28.35 GHz and 29.1-29.25 GHz remain unchanged, while the Commission simultaneously ensures the fullest possible use of all of this spectrum through minimal service rules for the 150 MHz co-primary portion of the 28 GHz band, thereby allowing two-way services throughout the entire 1 GHz of spectrum.

We applaud the Commission staff for its continued commitment to developing an acceptable compromise 28 GHz band segmentation plan that best accommodates all interested parties. While the spectrum needs of each proposed 28 GHz service cannot be fully met under any of the Options presented by the staff, we believe that this recommended approach modifying Option 1's treatment of the 150 MHz allocation


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will facilitate the provision of the numerous benefits of both LMDS and satellite services to U.S. consumers as soon as possible.


Finally, we believe that the prompt conclusion of the 28 GHz Rulemaking and the nationwide deployment of LMDS with sufficient spectrum and acceptable sharing criteria is essential to maintaining United States' leadership in developing the U.S.-pioneered LMDS technology as a significant global export. Moreover, through the prompt licensing of LMDS as we urge, the United States will define the standards and the technology for applications throughout the global community, where LMDS represents a spectrum efficient and cost effective alternative to other broadband communications technologies.


Respectfully submitted,

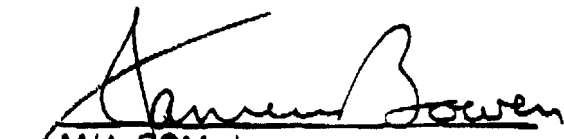

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James A. Bowen
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¹ The signatories' support for this approach is conditional on the Commission's grandfathering of CellularVision of New York, L.P.'s commercial LMDS license as proposed in the Third NPRM in CC Docket No. 92-297.

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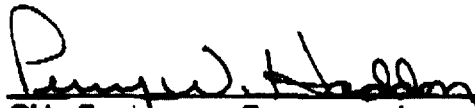
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